IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11078 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASIMAKRAM MOHD. UMAR DARJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11078 of 2001

MS JAYSHREE C BHATT for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on August 13, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the

provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The order is assailed mainly on the ground that the order of detention was in succession to order dated 2.7.2001 passed on same ground detaining the petitioner. Undisputedly, the first order was passed on 2.7.2001. It was revoked on 13.8.2001. On that very day, the impugned order came to be passed. No new grounds are added. Differently put, the present order is passed on the same ground as the earlier order. Learned advocate for the petitioner placed reliance on the decision in the case of Chhagan Bhagwan Kahar v. N.L. Kalna, 1989 SC 1234 and submitted that in absence of fresh grounds, the order cannot be sustained. It deserves to be quashed and the same may be quashed.

4. Learned Assistant Government Pleader, Mr. Joshi, has opposed this petition vehemently. In reply, he placed reliance on provisions of Section 15 of the PASA Act.

5. Having regard to rival side contentions, the Apex Court, in paragraph 12 of the judgment in Chhagan B. Kahar's case, has observed thus:-

> "It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of period of detention, there must be fresh facts for passing a subsequent order." (emphasis supplied).

The above observations were made by the Apex Court after considering provisions; of Section 15 of the PASA Act. In the instant case, undisputedly, there are no fresh grounds for passing a subsequent order, which was revoked and, therefore, the subsequent order impugned herein cannot be permitted to stand. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated August 13, 2001, passed against the detenu is hereby quashed. The detenu-Vasim Akram Mohmad Umar Darji is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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